

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

May 12, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MIRANDA B.,¹

Plaintiff,

vs.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 2:20-cv-00255-MKD

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 16, 17

Before the Court are the parties' cross-motions for summary judgment. ECF Nos. 16, 17. The parties consented to proceed before a magistrate judge. ECF No. 6. The Court, having reviewed the administrative record and the parties' briefing,

¹ To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names. *See* LCivR 5.2(c).

1 is fully informed. For the reasons discussed below, the Court denies Plaintiff's
2 motion, ECF No. 16, and grants Defendant's motion, ECF No. 17.

3 JURISDICTION

4 The Court has jurisdiction over this case pursuant to 42 U.S.C. § 405(g).

5 STANDARD OF REVIEW

6 A district court's review of a final decision of the Commissioner of Social
7 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
8 limited; the Commissioner's decision will be disturbed "only if it is not supported
9 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
10 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a
11 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159
12 (quotation and citation omitted). Stated differently, substantial evidence equates to
13 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and
14 citation omitted). In determining whether the standard has been satisfied, a
15 reviewing court must consider the entire record as a whole rather than searching
16 for supporting evidence in isolation. *Id.*

17 In reviewing a denial of benefits, a district court may not substitute its
18 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
19 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one
20 rational interpretation, [the court] must uphold the ALJ's findings if they are

1 supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674
2 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an
3 ALJ’s decision on account of an error that is harmless.” *Id.* An error is harmless
4 “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”
5 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ’s
6 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
7 *Sanders*, 556 U.S. 396, 409-10 (2009).

8 **FIVE-STEP EVALUATION PROCESS**

9 A claimant must satisfy two conditions to be considered “disabled” within
10 the meaning of the Social Security Act. First, the claimant must be “unable to
11 engage in any substantial gainful activity by reason of any medically determinable
12 physical or mental impairment which can be expected to result in death or which
13 has lasted or can be expected to last for a continuous period of not less than twelve
14 months.” 42 U.S.C. § 423(d)(1)(A). Second, the claimant’s impairment must be
15 “of such severity that he is not only unable to do his previous work[,] but cannot,
16 considering his age, education, and work experience, engage in any other kind of
17 substantial gainful work which exists in the national economy.” 42 U.S.C. §
18 423(d)(2)(A).

19 The Commissioner has established a five-step sequential analysis to
20 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §

1 404.1520(a)(4)(i)-(v). At step one, the Commissioner considers the claimant's
2 work activity. 20 C.F.R. § 404.1520(a)(4)(i). If the claimant is engaged in
3 "substantial gainful activity," the Commissioner must find that the claimant is not
4 disabled. 20 C.F.R. § 404.1520(b).

5 If the claimant is not engaged in substantial gainful activity, the analysis
6 proceeds to step two. At this step, the Commissioner considers the severity of the
7 claimant's impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If the claimant suffers
8 from "any impairment or combination of impairments which significantly limits
9 [his or her] physical or mental ability to do basic work activities," the analysis
10 proceeds to step three. 20 C.F.R. § 404.1520(c). If the claimant's impairment
11 does not satisfy this severity threshold, however, the Commissioner must find that
12 the claimant is not disabled. *Id.*

13 At step three, the Commissioner compares the claimant's impairment to
14 severe impairments recognized by the Commissioner to be so severe as to preclude
15 a person from engaging in substantial gainful activity. 20 C.F.R. §
16 404.1520(a)(4)(iii). If the impairment is as severe or more severe than one of the
17 enumerated impairments, the Commissioner must find the claimant disabled and
18 award benefits. 20 C.F.R. § 404.1520(d).

19 If the severity of the claimant's impairment does not meet or exceed the
20 severity of the enumerated impairments, the Commissioner must pause to assess

1 the claimant's "residual functional capacity." Residual functional capacity (RFC),
2 defined generally as the claimant's ability to perform physical and mental work
3 activities on a sustained basis despite his or her limitations, 20 C.F.R. §
4 404.1545(a)(1), is relevant to both the fourth and fifth steps of the analysis.

5 At step four, the Commissioner considers whether, in view of the claimant's
6 RFC, the claimant is capable of performing work that he or she has performed in
7 the past (past relevant work). 20 C.F.R. § 404.1520(a)(4)(iv). If the claimant is
8 capable of performing past relevant work, the Commissioner must find that the
9 claimant is not disabled. 20 C.F.R. § 404.1520(f). If the claimant is incapable of
10 performing such work, the analysis proceeds to step five.

11 At step five, the Commissioner considers whether, in view of the claimant's
12 RFC, the claimant is capable of performing other work in the national economy.
13 20 C.F.R. § 404.1520(a)(4)(v). In making this determination, the Commissioner
14 must also consider vocational factors such as the claimant's age, education, and
15 past work experience. *Id.* If the claimant is capable of adjusting to other work, the
16 Commissioner must find that the claimant is not disabled. 20 C.F.R. §
17 404.1520(g)(1). If the claimant is not capable of adjusting to other work, analysis
18 concludes with a finding that the claimant is disabled and is therefore entitled to
19 benefits. *Id.*

1 The claimant bears the burden of proof at steps one through four above.
2 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
3 step five, the burden shifts to the Commissioner to establish that 1) the claimant is
4 capable of performing other work; and 2) such work “exists in significant numbers
5 in the national economy.” 20 C.F.R. § 404.1560(c)(2); *Beltran v. Astrue*, 700 F.3d
6 386, 389 (9th Cir. 2012).

7 **ALJ’S FINDINGS**

8 On October 17, 2017, Plaintiff applied for Title II disability insurance
9 benefits alleging a disability onset date of October 1, 2017. Tr. 142, 251, 344-45.
10 The application was denied initially and on reconsideration. Tr. 274-77, 279-82.
11 Plaintiff appeared before an administrative law judge (ALJ) on May 31, 2019. Tr.
12 200-35. On July 9, 2019, the ALJ denied Plaintiff’s claim. Tr. 139-57.

13 At step one of the sequential evaluation process, the ALJ found Plaintiff,
14 who met the insured status requirements through December 31, 2022, has not
15 engaged in substantial gainful activity since October 1, 2017. Tr. 144. At step
16 two, the ALJ found that Plaintiff has the following severe impairments: cervical
17 degenerative disc disease and degenerative joint disease, and rotator cuff tears in
18 the bilateral shoulder status post surgeries. *Id.*

19 At step three, the ALJ found Plaintiff does not have an impairment or
20 combination of impairments that meets or medically equals the severity of a listed

1 impairment. Tr. 146. The ALJ then concluded that Plaintiff has the RFC to
2 perform light work with the following limitations:

3 [Plaintiff] cannot crawl or climb ladders, ropes, or scaffolds; she can
4 frequently climb ramps and stairs, balance, stoop, kneel, and crouch;
5 she can occasionally rotate her neck; she cannot reach overhead; she
6 cannot push or pull laterally or overhead with her upper extremities;
7 and she can have no exposure to hazards, such as unprotected heights
8 or moving mechanical parts.

9 Tr. 147.

10 At step four, the ALJ found Plaintiff is capable of performing her past
11 relevant work as a gambling cashier. Tr. 150. The ALJ did not make an
12 alternative step five finding. Therefore, the ALJ concluded Plaintiff was not under
13 a disability, as defined in the Social Security Act, from the alleged onset date of
14 October 1, 2017, through the date of the decision. Tr. 151.

15 On June 17, 2020, the Appeals Council denied review of the ALJ's decision,
16 Tr. 1-7, making the ALJ's decision the Commissioner's final decision for purposes
17 of judicial review. *See* 42 U.S.C. § 1383(c)(3).

18 ISSUES

19 Plaintiff seeks judicial review of the Commissioner's final decision denying
20 her disability insurance benefits under Title II of the Social Security Act. Plaintiff
raises the following issues for review:

1. Whether the ALJ conducted a proper step-two analysis;
2. Whether the ALJ properly evaluated Plaintiff's symptom claims;

1 3. Whether the ALJ properly assessed Plaintiff's RFC.²
2 ECF No. 16 at 11-12.

3 DISCUSSION

4 A. Step Two

5 Plaintiff contends the ALJ in finding Plaintiff's lumbar spine impairment
6 and adjustment disorder are not severe impairments. ECF No. 16 at 15-16. At step
7 two of the sequential process, the ALJ must determine whether the claimant suffers
8 from a "severe" impairment, i.e., one that significantly limits her physical or
9 mental ability to do basic work activities. 20 C.F.R. § 404.1520(c). To establish a

10 _____
11 ² Plaintiff lists the ALJ erring at step five as an issue, ECF No. 16 at 12, however
12 the ALJ found Plaintiff capable of performing her past relevant work at step four
13 and did not make an alternative step five determination, Tr. 150-51. Plaintiff only
14 sets forth an argument that the ALJ's erroneous RFC determination was harmful
15 because it impacted the ALJ's step four and step five findings, and does not set
16 forth any other arguments regarding the ALJ's vocational determination. ECF No.
17 16 at 19. Thus, the Court has addressed Plaintiff's contention that the ALJ's
18 erroneous analysis of Plaintiff's RFC was a harmful error because the ALJ found
19 Plaintiff capable of performing her past relevant work at step four, and finds there
20 is no step five issue to address.

1 severe impairment, the claimant must first demonstrate the existence of a physical
2 or mental impairment by providing medical evidence consisting of signs,
3 symptoms, and laboratory findings; the claimant's own statement of symptoms
4 alone will not suffice. 20 C.F.R. § 404.1521.

5 An impairment may be found to be not severe when "medical evidence
6 establishes only a slight abnormality or a combination of slight abnormalities
7 which would have no more than a minimal effect on an individual's ability to
8 work...." SSR 85-28 at *3. Similarly, an impairment is not severe if it does not
9 significantly limit a claimant's physical or mental ability to do basic work
10 activities; which include walking, standing, sitting, lifting, pushing, pulling,
11 reaching, carrying, or handling; seeing, hearing, and speaking; understanding,
12 carrying out and remembering simple instructions; responding appropriately to
13 supervision, coworkers and usual work situations; and dealing with changes in a
14 routine work setting. 20 C.F.R. § 404.1522(a); SSR 85-28.³

15 Step two is "a de minimus screening device [used] to dispose of groundless
16 claims." *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996). "Thus, applying
17

18
19 ³ The Supreme Court upheld the validity of the Commissioner's severity
20 regulation, as clarified in SSR 85-28, in *Bowen v. Yuckert*, 482 U.S. 137, 153-54
(1987).

1 our normal standard of review to the requirements of step two, [the Court] must
2 determine whether the ALJ had substantial evidence to find that the medical
3 evidence clearly established that [Plaintiff] did not have a medically severe
4 impairment or combination of impairments.” *Webb v. Barnhart*, 433 F.3d 683, 687
5 (9th Cir. 2005).

6 The ALJ found several of Plaintiff’s impairments were non-severe,
7 including her adjustment disorder. Tr. 144-45. The ALJ did not discuss Plaintiff’s
8 lumbar impairment, and did not list it as a severe impairment, thus finding it is
9 non-severe.

10 *1. Lumbar Spine Impairment*

11 Plaintiff first contends the ALJ erred in finding Plaintiff’s lumbar spine
12 impairment non-severe, because Plaintiff had Harrington Rods placed in her back.
13 ECF No. 16 at 16. While Plaintiff alleges her lumbar spine impairment should
14 have been found severe, because it caused more than minimal limitations on her
15 ability to perform basic work activities, *id.*, Plaintiff does not set forth any
16 argument as to what limitations her spine impairment has caused, nor does she cite
17 to any objective evidence or opinions to support her argument. As such, Plaintiff
18 has not met her burden in demonstrating her lumbar impairment is a severe
19 impairment.

1 2. *Adjustment Disorder*

2 Next, Plaintiff argues the ALJ erred in finding her adjustment disorder was
3 non-severe. ECF No. 16 at 15-16. The ALJ found Plaintiff's adjustment disorder
4 caused no more than mild limitations, and thus was non-severe. Tr. 145-46.
5 Plaintiff argues her adjustment disorder is severe because Dr. Ashworth, an
6 examining psychologist, opined Plaintiff's adjustment disorder caused limitations
7 in Plaintiff's abilities. ECF No. 16 at 16. However, the ALJ gave multiple reasons
8 why he found Dr. Ashworth's opinion was not persuasive, Tr. 150, and Plaintiff
9 does not challenge any of the reasons. Thus, any challenge to those findings is
10 waived. *See Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th
11 Cir. 2008) (determining Court may decline to address on the merits issues not
12 argued with specificity); *Kim v. Kang*, 154 F.3d 996, 1000 (9th Cir. 1998) (the
13 Court may not consider on appeal issues not "specifically and distinctly argued" in
14 the party's opening brief). Plaintiff does not point to any other objective evidence
15 or opinions to support her contention that her adjustment disorder causes more than
16 mild limitations. As such, Plaintiff has not met her burden in demonstrating her
17 adjustment disorder is a severe impairment.

18 Further, even if the ALJ should have determined that Plaintiff's spinal
19 impairment and adjustment disorder are severe impairments, any error would be
20 harmless because the step was resolved in Plaintiff's favor. *See Stout v. Comm'r of*

1 *Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006); *Burch v. Barnhart*, 400
2 F.3d 676, 682 (9th Cir. 2005). Plaintiff makes no showing that either of the
3 conditions cause limitations not already accounted for in the RFC. *See Shinseki*,
4 556 U.S. at 409-10 (the party challenging the ALJ's decision bears the burden of
5 showing harm). Thus, the ALJ's step two finding is legally sufficient.

6 **B. Plaintiff's Symptom Claims**

7 Plaintiff faults the ALJ for failing to rely on reasons that were clear and
8 convincing in discrediting her symptom claims. ECF No. 16 at 16-18. An ALJ
9 engages in a two-step analysis to determine whether to discount a claimant's
10 testimony regarding subjective symptoms. SSR 16-3p, 2016 WL 1119029, at *2.
11 "First, the ALJ must determine whether there is objective medical evidence of an
12 underlying impairment which could reasonably be expected to produce the pain or
13 other symptoms alleged." *Molina*, 674 F.3d at 1112 (quotation marks omitted).
14 "The claimant is not required to show that [the claimant's] impairment could
15 reasonably be expected to cause the severity of the symptom [the claimant] has
16 alleged; [the claimant] need only show that it could reasonably have caused some
17 degree of the symptom." *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

18 Second, "[i]f the claimant meets the first test and there is no evidence of
19 malingering, the ALJ can only reject the claimant's testimony about the severity of
20 the symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the

1 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
2 omitted). General findings are insufficient; rather, the ALJ must identify what
3 symptom claims are being discounted and what evidence undermines these claims.
4 *Id.* (quoting *Lester*, 81 F.3d at 834; *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th
5 Cir. 2002) (requiring the ALJ to sufficiently explain why it discounted claimant’s
6 symptom claims)). “The clear and convincing [evidence] standard is the most
7 demanding required in Social Security cases.” *Garrison v. Colvin*, 759 F.3d 995,
8 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec. Admin.*, 278 F.3d 920,
9 924 (9th Cir. 2002)).

10 Factors to be considered in evaluating the intensity, persistence, and limiting
11 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,
12 duration, frequency, and intensity of pain or other symptoms; 3) factors that
13 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and
14 side effects of any medication an individual takes or has taken to alleviate pain or
15 other symptoms; 5) treatment, other than medication, an individual receives or has
16 received for relief of pain or other symptoms; 6) any measures other than treatment
17 an individual uses or has used to relieve pain or other symptoms; and 7) any other
18 factors concerning an individual’s functional limitations and restrictions due to
19 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7; 20 C.F.R. §
20 404.1529(c). The ALJ is instructed to “consider all of the evidence in an

1 individual's record," to "determine how symptoms limit ability to perform work-
2 related activities." SSR 16-3p, 2016 WL 1119029, at *2.

3 The ALJ found that Plaintiff's medically determinable impairments could
4 reasonably be expected to cause some of the alleged symptoms, but that Plaintiff's
5 statements concerning the intensity, persistence, and limiting effects of her
6 symptoms were not entirely consistent with the evidence. Tr. 147.

7 *1. Inconsistent Objective Medical Evidence*

8 The ALJ found Plaintiff's symptom claims are inconsistent with the
9 objective medical evidence. Tr. 147-49. An ALJ may not discredit a claimant's
10 symptom testimony and deny benefits solely because the degree of the symptoms
11 alleged is not supported by objective medical evidence. *Rollins v. Massanari*, 261
12 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir.
13 1991); *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989); *Burch*, 400 F.3d at 680.
14 However, the objective medical evidence is a relevant factor, along with the
15 medical source's information about the claimant's pain or other symptoms, in
16 determining the severity of a claimant's symptoms and their disabling effects.
17 *Rollins*, 261 F.3d at 857; 20 C.F.R. § 404.1529(c)(2).

18 The ALJ found Plaintiff's physical symptoms are not as severe as Plaintiff
19 claimed. Tr. 147-49. While imaging showed Plaintiff had significant degenerative
20 changes in her cervical spine, her strength and sensation were both intact. Tr. 147-

1 48 (citing Tr. 495, 590, 805). Plaintiff had no numbness, tingling, or weakness in
2 her arms, and she had normal reflexes and normal range of motion. Tr. 148 (citing
3 Tr. 590, 812, 832). The ALJ noted Plaintiff gained nearly full use of her shoulder
4 after making an excellent recovery from right shoulder surgery. Tr. 148 (citing Tr.
5 512). Plaintiff also had surgery on her left shoulder. Tr. 148 (citing Tr. 601). In
6 June 2018, Plaintiff had normal grip strength, could make a full fist with both
7 hands, was able to manipulate a coin, button, and doorknob with both hands, and
8 had slightly reduced flexors and abductors of the left shoulder. Tr. 148-49 (citing
9 Tr. 615-16). Plaintiff contends the objective evidence is consistent with her
10 symptom claims, as she had cervical surgery after the hearing, and the evidence
11 demonstrates she had other physical impairments including a back impairment and
12 shoulder impairments. ECF No. 16 at 17-18. However, despite her impairments,
13 Plaintiff had no radicular findings on examination at her consultative examination,
14 and she had normal sensation and strength. Tr. 615-17.

15 The ALJ also found Plaintiff's mental health symptoms are not as severe as
16 she claimed. Tr. 145-46. While there were some abnormalities noted in the
17 psychological consultative examination, Plaintiff was able to perform five digits
18 forward and three backward, could recall three words immediately and upon delay,
19 she was polite and cooperative, followed a three-step command, and was able to
20 perform subtractions. *Id.* (citing Tr. 584-85). Plaintiff was generally observed as

1 polite and cooperative, and there is minimal mention of mental health symptoms in
2 the records; rather, Plaintiff is consistently noted as being alert and active, with
3 normal affect, and she denied anxiety and depression on many occasions. Tr. 23,
4 96, 100, 507, 511, 532, 589, 597, 700. Plaintiff reported doing well even without
5 medication for depression. Tr. 532. In her function report, Plaintiff generally
6 described minimal limitations in her mental functioning. Tr. 145-46 (citing Tr.
7 403-10).

8 On this record, the ALJ reasonably concluded that Plaintiff's symptom
9 claims are inconsistent with the objective medical evidence. This finding is
10 supported by substantial evidence and was a clear and convincing reason, along
11 with the other reasons offered, to discount Plaintiff's symptom complaints.

12 *2. Improvement with Treatment*

13 The ALJ found Plaintiff's symptom claims are inconsistent with her
14 improvement with treatment. Tr. 148. The effectiveness of treatment is a relevant
15 factor in determining the severity of a claimant's symptoms. 20 C.F.R. §
16 404.1529(c)(3); *Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th
17 Cir. 2006) (determining that conditions effectively controlled with medication are
18 not disabling for purposes of determining eligibility for benefits); *Tommasetti v.*
19 *Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008) (recognizing that a favorable response
20

1 to treatment can undermine a claimant's complaints of debilitating pain or other
2 severe limitations).

3 The ALJ found Plaintiff had improvement in her right shoulder impairment
4 after surgery. Tr. 148. In April 2017, Plaintiff's surgeon stated Plaintiff had an
5 excellent recovery in her shoulder, and she regained near full use without pain. Tr.
6 512. By January 2018, imaging demonstrated a potential tear of the right long
7 head bicep, Tr. 580. The ALJ also noted Plaintiff had surgery on her left shoulder
8 in March 2018. Tr. 148 (citing Tr. 601). At her June 2018 consultative
9 examination, while Plaintiff had decreased range of motion in her shoulders,
10 Plaintiff was able to make a full fist, pick up a coin, manipulate a button, turn a
11 doorknob, and tie a bow, and she had a normal grip strength, and a normal sensory
12 examination. Tr. 615-16. On this record, the ALJ reasonably concluded that
13 Plaintiff's impairments when treated were not as limiting as Plaintiff claimed. This
14 finding is supported by substantial evidence and was a clear and convincing reason
15 to discount Plaintiff's symptoms complaints.

16 *3. Activities of Daily Living*

17 The ALJ found Plaintiff's activities of daily living are inconsistent with her
18 symptom claims. Tr. 149. The ALJ may consider a claimant's activities that
19 undermine reported symptoms. *Rollins*, 261 F.3d at 857. If a claimant can spend a
20 substantial part of the day engaged in pursuits involving the performance of

1 exertional or non-exertional functions, the ALJ may find these activities
2 inconsistent with the reported disabling symptoms. *Fair*, 885 F.2d at 603; *Molina*,
3 674 F.3d at 1113. “While a claimant need not vegetate in a dark room in order to
4 be eligible for benefits, the ALJ may discount a claimant’s symptom claims when
5 the claimant reports participation in everyday activities indicating capacities that
6 are transferable to a work setting” or when activities “contradict claims of a totally
7 debilitating impairment.” *Molina*, 674 F.3d at 1112-13.

8 The ALJ noted Plaintiff’s ability to do dishes for 30 minutes per day was
9 inconsistent with her complaints of disabling neck and shoulder pain. Tr. 149
10 (citing Tr. 522). Plaintiff reported vacuuming, mopping, sweeping, dusting,
11 chopping and hauling wood, driving, riding a bicycle, cleaning her home while
12 assisting with a home remodel, handling yardwork, preparing simple meals,
13 shopping, making jewelry, caring for her disabled husband and multiple animals,
14 and serving as the administrator for a farmers’ market where she runs a booth in
15 the summer. Tr. 149 (citing, Tr. 406-07, 585-86, 614, 857, 871, 1092). Plaintiff
16 contends the ALJ erred because he did not address how often or how long Plaintiff
17 performed the activities, nor whether she had increased pain with activity. ECF
18 No. 16 at 18. However, the sum of Plaintiff’s many activities is inconsistent with
19 her allegations of disabling limitations. On this record, the ALJ reasonably
20 concluded that Plaintiff’s symptom claims were inconsistent with her activities of

1 daily living. This finding is supported by substantial evidence and was a clear and
2 convincing reason to discount Plaintiff's symptoms complaints.

3 C. RFC

4 Plaintiff faults the ALJ for not incorporating her absenteeism, time off-task,
5 and sedentary work restrictions into the RFC. ECF No. 16 at 18-19. At step four
6 of the sequential evaluation, the ALJ must determine the claimant's RFC. 20
7 C.F.R. § 404.1520(a)(4)(iv). "[T]he ALJ is responsible for translating and
8 incorporating clinical findings into a succinct RFC." *Rounds v. Comm'r Soc. Sec.*
9 *Admin.*, 807 F.3d 996, 1006 (9th Cir. 2015). "[A]n ALJ's assessment of a claimant
10 adequately captures restrictions related to concentration, persistence, or pace where
11 the assessment is consistent with restrictions identified in the medical testimony."
12 *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1174 (9th Cir. 2008). To the extent
13 the evidence could be interpreted differently, it is the role of the ALJ to resolve
14 conflicts and ambiguity in the evidence. *Morgan v. Comm'r Soc. Sec. Admin.*, 169
15 F.3d 595, 599-600 (9th Cir. 1999). Where evidence is subject to more than one
16 rational interpretation, the ALJ's conclusion will be upheld. *Burch v. Barnhart*,
17 400 F.3d 676, 679 (9th Cir. 2005); *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir.
18 2012) (recognizing the court only disturbs the ALJ's findings if they are not
19 supported by substantial evidence).

1 Plaintiff first contends the ALJ erred in failing to include limitations to being
2 off-task and absent from work in the RFC. ECF No. 16 at 19. However, Plaintiff
3 does not cite to any opinion evidence nor medical evidence to support her
4 contention that she would be off-task or absent from work. Plaintiff next contends
5 the ALJ erred in failing to limit her to sedentary work. *Id.* Again, Plaintiff does
6 not point to opinion evidence nor medical evidence to support her argument. The
7 ALJ relied on several opinions that support the ALJ's RFC, and Plaintiff does not
8 challenge any of the opinions. Tr. 149, 207-08, 211, 265-67. Plaintiff's RFC
9 argument relies entirely on her argument that the ALJ erred in rejecting her
10 symptom claims. Plaintiff argues the ALJ's erroneous RFC led to a harmful error
11 at step four and five, but does not set forth any additional arguments regarding the
12 ALJ's step four determination, and as discussed *supra*, the ALJ did not make a step
13 five determination. A claimant fails to establish that a step five determination is
14 flawed by simply restating argument that the ALJ improperly discounted certain
15 evidence, when the record demonstrates the evidence was properly rejected.
16 *Stubbs–Danielson*, 539 F.3d at 1175-76. The ALJ rejected Plaintiff's statements
17 for clear and convincing reasons, as discussed *supra*. As such, Plaintiff has not
18 demonstrated the ALJ erred in his RFC assessment nor in his vocational
19 assessment.

1 **CONCLUSION**

2 Having reviewed the record and the ALJ's findings, the Court concludes the
3 ALJ's decision is supported by substantial evidence and free of harmful legal error.

4 Accordingly, **IT IS HEREBY ORDERED:**

5 1. Plaintiff's Motion for Summary Judgment, **ECF No. 16**, is **DENIED**.

6 2. Defendant's Motion for Summary Judgment, **ECF No. 17**, is **GRANTED**.

7 3. The Clerk's Office shall enter **JUDGMENT** in favor of Defendant.

8 The District Court Executive is directed to file this Order, provide copies to
9 counsel, and **CLOSE THE FILE**.

10 DATED May 12, 2021.

11 s/Mary K. Dimke

12 MARY K. DIMKE

13 UNITED STATES MAGISTRATE JUDGE
14
15
16
17
18
19
20